



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3644 FAX (603) 271-2181



Midway Excavators, Inc.  
84 Exeter Road  
South Hampton, NH 03827

Re: DES Site # 199506011  
Midway Excavators, Inc  
Route 150  
South Hampton, NH

**ADMINISTRATIVE ORDER**  
**No. WMD 3-23**

September 3, 2003

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Midway Excavators, Inc. pursuant to RSA 146-A. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Midway Excavators, Inc. ("Midway") is a New Hampshire corporation having a mailing address of 84 Exeter Road, South Hampton, NH 03827.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 146-A authorizes DES to minimize contamination of the waters and land of the state due to oil discharge or spillage. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Administrative Rules Env-Wm 1403 to implement this program.
2. RSA 146-A:15 authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-A, including any rule adopted pursuant thereto. Pursuant to RSA 146-A:15, the Commissioner of DES has adopted Env-C 606 to establish the schedule of fines for such violations relating to oil spills.
3. Midway is the owner of six (6) permanently closed USTs: one 10,000-gallon diesel tank; one 6,000-gallon diesel tank; two 4,000-gallon other use tanks; one 2,000-gallon used oil tank; and one 9,000-gallon used oil tank. All six USTs have been removed. The USTs were located at Route 150, South Hampton, NH further identified by the DES site number 199506011 ("the Facility").
4. The Facility is subject to the requirements of RSA Chapter 146A and NH Administrative Rules Env-Wm 1403.

5. Env-Wm 1403.07 requires that following notification of a violation of the groundwater quality criteria pursuant to Env-Wm 1403.06, the legally responsible party shall investigate the site and the off-site surrounding area for possible impacts of the contamination.
6. On May 11, 1995, DES received a letter from C.A.B. Services, Inc. indicating that a discharge of oil had occurred at the Midway site. The UST Closure Site Plan and analytical results accompanied the letter.
7. In a letter dated June 15, 1995, DES requested a site investigation ("SI") from Midway. Env-Ws 412.10 requires Midway to submit the SI to DES within 120 days of DES notification. However, Midway was unresponsive to this request.
8. In a letter dated May 7, 2002, DES sent a second and final request to Midway for the SI. DES also informed Midway that DES would issue fines and/or use the state contractor to complete the site inspection report. Midway was given until August 30, 2002 to comply.
9. On June 19, 2002, DES received a copy of Midway's UST Closure Investigative Report from Vanasse Hangen Brustlin, Inc. This report did not satisfy the site investigation requirements outlined in Env-Wm 1403.07.
10. Env-C 606.03 authorizes DES to impose administrative fines "for violations relating to response and investigatory requirements for discharges of petroleum products subject to RSA 146-A."
11. Env-C 606.03(f) requires that, "for failing to submit a site investigation report as required by Env-Ws 412.10(d), the amount of the administrative fine shall be \$2,000 per calendar month or portion thereof that the site investigation report is late."
12. To date, Midway has not submitted a site investigation report in accordance with Env-Wm 1403.07.

#### **D. DETERMINATION OF VIOLATIONS**

1. Midway has violated RSA 146-A by failing to meet response and investigatory requirements for discharges of petroleum products.
2. Midway has violated Env-Wm 1403.07 and Env-Ws 412.10(d) by failing to submit a site investigation report.

#### **E. ORDER**

Based on the above findings, DES hereby orders Midway as follows:

1. **By September 15, 2003**, submit a consultant contract as proof that the site investigation will be conducted.
2. **By January 31, 2004**, submit a site investigation report in accordance with Env-Wm 1403.07.

3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Gary Lynn, P.E., Supervisor, Petroleum Remediation Section/ORCB  
DES Waste Management Division  
6 Hazen Drive  
Concord, NH 03301  
Fax: (603) 271-8873  
e-mail: glynn@des.state.nh.us

#### F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Midway of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 146-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

  
Philip J. O'Brien, Ph.D., P.G., Director  
Waste Management Division

  
Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7000 1670 0000 0584 7579

cc: Mark Harbaugh, DES Legal Unit  
Public Information Officer, DES PIP Office  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
South Hampton Public Health Officer